THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 27160 of 1995

Dated: 20.12.2006

Between:

Sri K.Nageswara Rao

… Petitioner

AND

The Industrial Tribunal-cum-Labour Court,
Guntur & another.

… Respondents

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 27160 of 1995

ORDER:-

The petitioner, who is a conductor in the A.P. State Road Transport Corporation working in Tadepalligudem Depot at the relevant point of time, filed this writ petition questioning the Award of the 1st respondent in I.D.No.25 of 1991 dated 27.04.1992 whereby it declined to interfere with the order of penalty imposed on the petitioner.

The petitioner while on duty on 09.04.1987 conducting the bus on route T.P.Gudem to Koyyalagudem, a check was conducted leading to issuance of charge memo on 09.04.1987 with the following charges:

> "1) For your failure to issue a ticket to one of the two passengers of a batch (wife and husband) after having collected the total requisite fare of Rs.4/- (Rs.2/- each ticket) who had traveled from Ernagudem and bound for Koyyalagudem ex-stages 10 to 14. While you were conducting the vehicle AAZ 5701 on the route T.P.Gudem – Koyyalagudem (ch.gudem) on 09.04.1987 which amounts to misconduct in terms of APSRTC Employees (Conduct) Regulations, 1963.

2) You have created a scene in which a group of passengers had resisted the checking officials and they couple from framing a case and a passenger statement respectively – which amounts to misconduct in terms of APSRTC Employees (Conduct) Regulations, 1963."

Not being satisfied with the reply filed by the petitioner, a departmental enquiry was held. Based on the enquiry report submitted by the enquiry officer, the 2nd respondent issued a final order-cum-show cause notice to the petitioner on 23.09.1987 to treat the period of suspension as "not on duty" and to withhold annual increment of the petitioner for a period of two years with effect of postponing future increments. After considering the explanation of the petitioner, the 2nd respondent passed an order on 28.04.1988 confirming the aforementioned proposals made in the final order-cum-show cause notice. The appeal preferred by the petitioner to the Divisional Manager, West Godavari District, Eluru, resulted in its dismissal through his order dated 22.04.1989. Questioning the said two orders, the petitioner raised an industrial dispute, which ended as aforementioned. The said Award is the subject matter of this writ petition.

Having regard to the peculiar facts of this case, all the factual details need not be gone into in this writ petition. Suffice it to note that with regard to the 1st charge which constitutes the gravest of the two charges if proved, apart from the T.I Grade-II of Special Checking Squad Sri K.S.R.Murthy, driver of the bus concerned Sri J.S.N. Raju and Sri J.Ramachandra Rao, T.I. Grade-II, Sri Chevala Nageswara Rao, S/o. Somanna was summoned as a witness and examined. He is no other than one of the two passengers from whom the petitioner

allegedly collected fare for two tickets, but issued only one ticket. It is apt to extract the relevant portion of the statement of Sri Chevala Nageswara Rao from a copy of it passed on by Sri Bala Prasad, the authenticity of which is not denied by Sri Manmada Reddy, learned Standing Counsel for APSRTC.

> "On 09.04.1987, I boarded into the bus at Yernagudem along with my wife to proceed for Koyyalagud. I have given Rs.5/- note to the Conductor towards ticket fare and the conductor had issued two tickets of Rs.2/- deno., and refunded Re.1/- to me. After reaching Koyyalagudem, I alighted from the bus near Gandhi statue turning along with some of the passengers but the bus started again before my wife alighted and went upto the stage. I ran along with the bus, requesting the conductor to stop the bus for alighting of my wife, but bus was not stopped immediately but stopped at stage where some checking officials entered into the bus for checking. I was furious for not stopping the vehicle on the conductor and while I am torning the ticket, one of the passenger came from the bus told me not to torn the ticket as the checking officials are checking the tickets and my wife was detained in the bus for want of ticket. But by the time, I torned one ticket and hence keeping one ticket with me and went near the bus. While going to the bus one of the checking officials asked me about my ticket and I produced one ticket to him and told him that I was given one ticket only. After reaching the bus, I made to enter into the bus, I asked again about the ticket. They further told if I took only one ticket, the penalty of Rs.100/- has to be paid or not taking another ticket. Then I told them clearly that I have paid Rs.5/- to the conductor at the boarding point Yernagudem, the conductor has issued only one ticket and refunded Re.1/- to me. The conductor has not asked me anything except telling to tell the truth, but I have not replied to the conductor. The checking officials have recorded the statement through

one of the person brought from outside and obtained my thumb impression. I do not know what happened afterwards and we went away from that place. But nothing was happened except the recording of my statement and during my stay in the bus."

From the afore-extracted statement of Sri Chevala Nageswara Rao, it is clear that he has not supported the case of the department. If this statement is accepted, there will be no basis for charge No.1, which, as already said, is the more serious of the two charges. However, the Labour Court in its Award failed to consider this statement altogether. There is not even a reference to the statement of this witness. Apart from this, in para 4, while referring to the purported counter of the respondent Management, the Labour Court extracted the contents of the counter-affidavit pertaining to facts, which are totally unrelated to the present case. This fact is fairly accepted by Sri Manmada Reddy, learned Standing Counsel. This also shows further non-application of mind on the part of the Labour Court in dealing with the case of the petitioner.

In the premises aforementioned, the Award of the Labour Court cannot be sustained and it is accordingly set aside. The Labour Court is directed to reconsider the matter afresh taking into consideration the entire evidence available on record including the evidence of Sri Chevala Nageswara Rao, S/o. Somanna recorded during the departmental enquiry and consider the case afresh.

The writ petition is accordingly disposed of. No order as to costs.

Since the matter is of more than 12 years old, it is desirable that the Labour Court shall dispose of the same within three months from the date of receipt of a copy of this order.

C.V. NAGARJUNA REDDY, J

Date: 20.12.2006
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